92-2030

No. _____

Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

In The

Supreme Court of the United States

October Term, 1992

DOROTHY C. GREGORY,

Petitioner,

v.

OFFICE OF PERSONNEL MANAGEMENT,

Respondent.

On Petition For A Writ Certiorari To The United States Court Of Appeals For The Federal Circuit

PETITION FOR WRIT OF CERTIORARI

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June 21, 1993

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30 pp

QUESTIONS PRESENTED FOR REVIEW

1. May Congress create a property interest or the right or expectancy to a property interest in the form of a proportional annuity benefit to a former spouse of a retired Federal employee, but provide for defeasance of that interest by imposing a deadline for application without notice reasonably calculated to apprise such former spouse or the retired Federal employee of the deadline for application for such benefit under the due process clause of the Fifth Amendment to the Constitution of the United States?

RELATED QUESTION:

a. Did the Office of Personnel Management correctly interpret or apply their rules and/or statutes relating to application by a former spouse of a Federal employee for an annuity benefit in a manner reasonably designed to afford legally adequate notice to the beneficiary or prospective beneficiary of their right to such benefit?

PARTIES INVOLVED

The parties appearing in the caption of the case are the parties to the proceeding before the United States Court of Appeals for the Federal Circuit.

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No. _____

In The

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October Term, 1992

DOROTHY C. GREGORY,

Petitioner,

v.

OFFICE OF PERSONNEL MANAGEMENT,

Respondent.

On Petition For A Writ Certiorari To The United States Court Of Appeals For The Federal Circuit

PETITION FOR WRIT OF CERTIORARI

ORDERS AND OPINIONS BELOW

The United States Court of Appeals for the Federal Circuit on April 5, 1993 entered an unpublished Per Curiam Order in Case No. 92-3594, styled: Dorothy C. Gregory, Petitioner, versus Office of Personnel Management, Respondent; On Appeal From the Merit Systems Protection Board in Case No. DA0831920202-I-l. The Per Curiam Order is attached as Appendix A. The Final Order of the Merit Systems Protection Board, entered July 29, 1992, is attached as Appendix B. The Initial Decision of the Merit Systems Protection Board, entered March 27, 1992, is attached as Appendix C.

JURISDICTION

The date of entry of Judgment or Decree sought to be reviewed is April 5, 1993. There were no applications for rehearing urged below. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. Sections 1254(1) and 2101(c).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

(1) The Constitution of the United States of America, Fifth Amendment, provides in pertinent part:

> No person shall be . . . deprived of . . . property, without due process of laws. . . .

(2) The "Civil Service Retirement Spouse Equity Act of 1984," 5 U.S.C. Section 8341(b)(l)(B), as amended in pertinent part circa 1984 through 1989, provided annuity benefits to the surviving former spouse of a retired Federal employee if certain eligibility criteria were satisfied, which in pertinent part related to the issues presented for review to this Court, states:

> (i) The former spouse's marriage to the employee or member was dissolved after September 14, 1978, and before May 8, 1987;
>
> (ii) the former spouse was married to the employee or member for at least ten years during periods of creditable service under Section 8332 of Title 5, United States Code . . . ;
>
> (iii) the former spouse has not remarried before age fifty-five after September 14, 1978;

(iv) the former spouse files an application for the survivor annuity with the Office of Personnel Management on or before May 7, 1989; and

(v) the former spouse is at least fifty years of age on May 7, 1987.

STATEMENT OF THE CASE

On June 18, 1991, Petitioner applied for an entitlement to a Federal annuity as the former spouse of John W. Gregory, Jr. On October 11, 1991, the Office of Personnel Management ("OPM") notified Petitioner that she was ineligible, because her application had not been received by the statutory deadline of May 8, 1989. Petitioner sought reconsideration of the decision from OPM, but was denied. On January 7, 1992, Petitioner appealed OPM's decision to the Merit Systems Protection Board ("MSPB"). On March 27, 1992, MSPB issued an Initial Decision affirming OPM's denial of proportional annuity benefits. (Appendix C) Petitioner timely sought a review of the Initial Decision. On July 29, 1992, the MSPB denied Petitioner's petition for review. (Appendix B) Thereafter, Petitioner appealed to the United States Court of Appeals for the Federal Circuit and the issue was presented to that court upon the briefs of the parties. The United States Court of Appeals for the Federal Circuit affirmed MSPB's decision by a Per Curiam Order dated April 5, 1993 (Appendix A) from which decision this Honorable Court's review is sought by Writ of Certiorari.

BASIS FOR FEDERAL JURISDICTION IN COURT OF FIRST INSTANCE

The basis for federal jurisdiction in the Court of first instance, the Merit Systems Protection Board, was 5 U.S.C. Section 8347(d); jurisdiction of the United States Court of Appeals for the Federal Circuit to review MSPB's decision was 5 U.S.C. Section 7703(a)(l).

REASONS FOR GRANTING THE WRIT

THE CONGRESSIONAL SCHEME FOR AWARDING OR DENYING PROPORTIONAL ANNUITY BENEFITS TO A FORMER SPOUSE OF A RETIRED FEDERAL EMPLOYEE CREATES OR RECOGNIZES EITHER A PROPERTY INTEREST, OR AT LEAST A LEGITIMATE CLAIM OF ENTITLEMENT TO A PROPERTY INTEREST IN SUCH FORMER SPOUSE, BUT ALLOWS A DEFEASANCE OF THAT INTEREST BY PROCESS OR PROCEDURES WHICH EMPLOY LEGALLY INADEQUATE NOTICE IN VIOLATION OF DUE PROCESS OF LAW.

The material facts below are not in dispute. Petitioner was the former spouse of John W. Gregory, Jr., who was deceased at the time of Petitioner's application for proportional annuity benefits on June 18, 1991. As to the other conditions or "eligibility criteria" of 5 U.S.C. Section 8341(b)(l)(B) (1984), e.g., the date of Ms. Gregory's divorce from Mr. Gregory, the duration of their marriage, the status or fact that Ms. Gregory had not thereafter remarried, and Ms. Gregory's age at time of application for benefits, Petitioner was in all respects eligible or otherwise had met such eligibility criteria.

At every level recited in the Statement of the Case, Petitioner's denial to annuity benefits was predicated upon the Congressional limitation or condition that an applicant in Ms. Gregory's category had to file an application for a survivor annuity with OPM on or before May 7, 1989. See, Statement of Facts Summary, Brief of Respondent in Appeal No. 92-3594, at pages 2-5. The Initial Decision of MSPB (Appendix C) noted the equitable considerations were "compelling." The Administrative Law Judge nonetheless concluded there was no fact basis for waiving the statutory requirement established by Congress.

The legal argument of Respondent OPM before the United States Court of Appeals for the Federal Circuit, and presumably that Court's legal basis for its Per Curiam affirmation of MSPB's denial, was *Iacono v. Office of Personnel Management*, 974 F.2d 1326 (Fed Cir. 1992), which in turn quoted the decisions of this Honorable Court in *Office of Personnel Management v. Richmond*, 496 U.S. 414 (1990) and *Schweiker v. Hansen*, 450 U.S. 785 (1981).

In *Office of Personnel Management v. Richmond, supra*, this Honorable Court held that payments of money from the Federal Treasury are limited to those "authorized by statute," and erroneous advice given by a Government employee to a disability-retired Federal employee did not thereby equitably estop the Government from disallowing retirement benefits, because the employee in reliance upon the erroneous advice had earned in excess of that allowed by amendments to 5 U.S.C. Section 8337(d), as contained in Pub.L. 97-253, 96 Stat. 792. The *ratio decidendi* of the *Richmond* decision was that dicta in *Montana v.*

Kennedy, 336 U.S. 308 (1961) did not create a circumstance where a retired Federal employee could circumvent the statutory rules for restoration of earning capacity by employing the theory of estoppel even, arguendo, if he had been misled by an agent of the Government.

It is the premise that payments of money from the Federal Treasury are *limited* to those authorized by statute that underlies OPM's contentions below. It is under this same premise that OPM contends no notice beyond statute is required to inform an annuity beneficiary or potential beneficiary of their annuity rights or the need to exercise same by a date certain, and by which OPM adjudicates the right to receive proportional annuity benefits from former spouses of retired Federal employees, because OPM views the filing period as a particular eligibility requirement and not as a period of limitation. *Iacono v. Office of Personnel Management, supra*, at 1328. Both *Iacono* and *Koyen v. Office of Personnel Management*, 974 F.2d 1326 (Fed Cir. 1992), also, dealt with an argument of equitable tolling or estoppel as constituting a waiver.

Similarly, *Schweiker v. Hansen, supra*, dealt with an argument of an equitable estoppel where a field representative of the Social Security Administration had erroneously informed a potential recipient that she was not eligible for her mother's "insurance benefits," and based upon these advisements such recipient had not timely filed an application. This Honorable Court granted certiorari, reversing the United States Court of Appeals for the Second Circuit, holding the government agent's misstatements did not estop the Secretary of Health and Human Services from denying retroactive benefits, and

further holding that it was the duty of all courts to observe the conditions defined by Congress for charging the public treasury, quoting *Federal Crop Insurance Corp. v. Merrill*, 332 U.S. 380, 385 (1947).

This request for review argues that even Congress may not create the substantive right to a pension or proportional pension benefit, and couple its enjoyment with an application deadline under circumstances that a potential recipient would likely not receive notice of the requirement to file an application by a time certain.

This Honorable Court has, also, consistently decided that even Congress when drafting spousal benefits for retired or disabled wage earners must craft procedural and substantive eligibility requirements consistent with the Due Process Clause of the Fifth Amendment to the United States Constitution. *Califano v. Goldfarb*, 430 U.S. 199 (1977).

It seems beyond cavil that Petitioner up to the May 7, 1989 application deadline had the opportunity to qualify for spousal annuity benefits (the Administrative Law Judge found compelling equitable considerations for the particular case, and Petitioner qualified in every other respect). Petitioner's case is similar to that present in *Goldberg v. Kelley*, 397 U.S. 254 (1970), where financial aid recipients whose benefits were terminated were determined to have possessed a legitimate claim of entitlement invoking due process protection, even though claimants had not demonstrated they were within the terms of statutory eligibility.

Petitioner recognizes the rule that process is "not an end in itself," and that procedural protection of property

interests has been recognized in regard to interests *already acquired* in specific benefits. *Board of Regents v. Roth,* 408 U.S. 564, 576 (1972). In *Olim v. Wakinekona,* 461 U.S. 238, 250 (1983), this Honorable Court defined the protected interest to include those claims in which the individual had a "legitimate claim of entitlement." In *Carey v. Piphus,* 435 U.S. 247, 266 (1978), the focus of a legitimate claim of entitlement was said to be upon the degree of discretion given the decision maker and not upon the probability of entitlement.

This request for review is concerned with only one aspect of due process, albeit perhaps its most important component: notice. The undisputed evidence below was not just that Petitioner had received no notice, but also, that her deceased former spouse had also received no notice of the opportunity for an annuity election. This is a critical fact, because reason would dictate that the Government might have difficulty in ascertaining or locating all "former spouse(s)" of retired or disabled annuitants. Thus, the burden to ferret out and notify all such former spouses could reasonably be said to be undue or excessive, and thereby an impairment upon Congress' ability to control payments from the Federal treasury. The defined class of the retired or disabled annuitants was and is, however, not so problematic. The Congressional scheme for proportional annuity benefits for former spouses under the Civil Service Retirement Spouse Equity Act of 1984, 5 U.S.C. Section 8341, did provide annuity benefits to the surviving former spouse of a retired Federal employee if certain eligibility criteria were satisfied, but in and of itself or as administered by OPM, did not cause notice to be sent even to the defined class of the

retired or disabled annuitants themselves, who it may be supposed could have alerted their former spouses.

Unless such retirees and/or their former spouses were an avid reader of the Congressional Record, the United States Code supplements or other such material, which is esoteric to the ordinary citizen, the knowledge of such claim of entitlement was for them, also, problematic.

The essence of this request for review is that without notice of a reasonable nature to alert the former spouse of such benefit, for the most part the benefit is not available as intended. Petitioner asks this Honorable Court first to declare that minimal standards of due process apply to annuity benefits to former spouses of retired Federal employees under the rationale of *Goldberg v. Kelley, supra,* and then to apply that standard used in its landmark decision of *Fuentes v. Shevin,* 407 U.S. 67 (1972) that notice must be rendered both in a meaningful manner and in a meaningful time so as to protect the interest in question.

There exists no better definition of reasonable notice than this Honorable Court's decision or definition in *Mullane v. Central Hanover Bank and Trust Co.,* 339 U.S. 306, 315 (1949):

> The means employed must be such as one ***desirous of actually informing the absentee might reasonably adopt to accomplish it.*** (Emphasis added.)

Had this standard been utilized by Congress or OPM in implementing the Spouse Equity Act, Petitioner clearly would have comprehended her "equitable" right to a proportional benefit of her former spouse's annuity.

Because she had no cognizance or comprehension of such right, until after a conditional "deadline" for applying, Petitioner's right was lost – or forfeited.

OPM below cited *Koyen v. Office of Personnel Management, supra,* at 921, for the proposition that "despite the equities alleged in this case, we are bound by the dictates of *Richmond*. If remedy there is to be, it lies with Congress."

Clearly, if the Legislative Act doctrine is paramount, i.e., if Congress can impose such a condition without attendant, adequate notice to the intended recipient, then this Petitioner does not state a proper cause for review by this Honorable Court. However, if even Congress must satisfy standards of due process in the design of a property interest in retirement benefits to be equally or proportionally (equitably) shared between those who were married during the period of acquisition of all or a substantial part of the retirement benefits, then a cause for review is stated. If even Congress is prohibited from disregarding the requirement of reasonable or legally adequate notice of the right to such benefits under the argument that no notice is required and the limitation is only a "condition of entitlement," then in that event it is equally apparent from the record below that notice to this Petitioner was inadequate and due process was denied.

CONCLUSION

It is the essential contention of this request for review that minimum standards of due process, especially notice, apply when Congress designs an important retirement benefit for those who have served their lives as government employees. That due process apply must be equally true for those who were married to the retired Federal employee and who, through their efforts during coverture and while the credited service was performed which earned the retirement benefit, are and should be entitled to share in such benefits according to the substantive right designed by Congress.

Inasmuch as the Civil Service Retirement Spouse Equity Act of 1984 recognized that an important benefit was owed to such former spouses, because such former spouse helped the Federal retiree earn the benefit by being married during credited service, then it is equally true that its enjoyment should not be reserved to the lucky (who by chance learned of the Act) or those with special information (who by virtue of their position or personal relationships learned of the right).

Rather, the enjoyment of such benefit should be dependent upon the due exercise of rights by the former spouse who qualifies in all truly substantive aspects of the Act, e.g., length of marriage, years of marriage during creditable service, has not remarried, etc., and who has been given adequate notice of those rights so that he or she might knowingly decide to exercise them.

The denial of such a fundamental right in the procedural resolution or acquisition of an important benefit, a benefit upon which many elderly citizens turn or rely in

their daily lives, calls for the exercise of this Court's power of discretion and the issuance of the Writ of Certiorari.

Respectfully submitted.

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629 24th Avenue S.W.
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Tel.: (405) 360-9700

Attorney for Petitioner

June 21, 1993

APPENDICES

APPENDIX A

Note: Pursuant to Fed. Cir. R. 47.8, this disposition is not citable as precedent. It is a public record. The disposition will appear in tables published periodically.

United States Court of Appeals for the Federal Circuit

92-3594

DOROTHY C. GREGORY,

Petitioner,

v.

OFFICE OF PERSONNEL MANAGEMENT,

Respondent.

Judgment

(Filed Apr. 5, 1993)

ON APPEAL from the MERIT SYSTEMS PROTECTION BOARD *in CASE NO(S).* DA0831920202-I-1 *This CAUSE having been considered, it is ORDERED and ADJUDGED:* Per Curiam (NIES, *Chief Judge,* RICH and MICHEL, *Circuit Judges*): AFFIRMED. *See* Fed. Cir. R. 36.

DATED APR 5 1993

ENTERED BY ORDER OF THE COURT

/s/ Francis X. Gindhart
Francis X. Gindhart, Clerk

ISSUED AS A MANDATE: April 26, 1993

APPENDIX B

UNITED STATES OF AMERICA
MERIT SYSTEM8 PROTECTION BOARD

DOROTHY C. GREGORY,
Appellant,
v.
OFFICE OF PERSONNEL MANAGEMENT,
Agency.
(CSA 1 972 911)

DOCKET NUMBER
DA0831920202-I-1

DATE: JUL 29 1992

John W. Gregory III, Norman, Oklahoma, for the appellant.

Connie R. Torrillo, Washington, D.C., for the agency.

BEFORE

Daniel R. Levinson, Chairman
Antonio C. Amador, Vice Chairman
Jessica L. Parks, Member

ORDER

After full consideration, we DENY the appellant's petition for review of the initial decision issued on March 27, 1992, because it does not meet the criteria for review set forth at 5 C.F.R. § 1201.115. This is the Board's final order in this appeal. The initial decision in this appeal is now final. 5 C.F.R. § 1201.113(b).

NOTICE TO APPELLANT

You have the right to request the United States Court of Appeals for the Federal Circuit to review the Board's final 5 U.S.C. § 7703(a)(1). You must submit your request to the court at the following address:

United States Court of Appeals
for the Federal Circuit
717 Madison Place, N.W.
Washington, DC 20439

The court must receive your request for review no later than 30 calendar days after receipt of this order by your representative, if you have one, or receipt by you personally, whichever receipt occurs first. *See* 5 U.S.C. § 7703(b)(1).

FOR THE BOARD: /s/ Robert E. Taylor
Robert E. Taylor
Clerk of the Board

Washington, D.C.

CERTIFICATE OF SERVICE

I certify that this ORDER was sent today:

By certified mail to:

John W. Gregory, III
1512 Huntington
Norman, OK 73069

By regular mail to:

Dorothy C. Gregory
1512 Huntington
Norman, OK 73069

Connie R. Torrillo
Retirement Policy Division
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Merit Systems Protection Board
Dallas Regional Office
1100 Commerce Street, Room 6F20
Dallas, TX 75242

By hand to:

Office of Special Counsel
1120 Vermont Avenue, N.W.
Washington, DC 20005

JUL 29 1992
(Date)

Washington, D.C.

/s/ Luz N. Maldonado
Robert E. Taylor
for Clerk of the Board

APPENDIX C

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD
DALLAS REGIONAL OFFICE

DOROTHY C. GREGORY, Appellant, v. OFFICE OF PERSONNEL MANAGEMENT, Agency. (CSF 1 972 911)	DOCKET NUMBER DA-0831-92-0202-I-1 DATE: March 27, 1992

John W. Gregory III, Norman, Oklahoma, for the appellant.

Connie E. Torrillo, Washington, D.C., for the agency.

BEFORE

Sharon Fonsworth Jackson
Administrative Judge

INITIAL DECISION

Dorothy C. Gregory filed an appeal on January 7, 1992, from a reconsideration decision of the Office of Personnel Management (OPM) which found that she is not entitled to survivor annuity benefits as the former spouse of John W. Gregory. The Board has jurisdiction over the appeal pursuant to the provisions of 5 U.S.C.

§ 8347(d). At the appellant's request, a hearing was held on March 2, 1992.

Based on the following analysis and findings, the agency's reconsideration decision is AFFIRMED.

ANALYSIS AND FINDINGS

The appellant bears the burden of proving that she is entitled to the benefits she seeks.

The record reflects that the appellant and John W. Gregory were married on September 2, 1947, and were divorced on June 24, 1969. Appeal File, Tabs 1, 3. The record further reflects that Gregory retired on medical disability on April 9, 1970; he subsequently remarried; his spouse died on July 30, 1985; and he died on June 4, 1991. *See id.*

By letter dated June 18, 1991, the appellant advised OPM of her previous marriage to Gregory and of his death. *See* Appeal File, Tab 5(6). She stated that, during one of her recent visits with Gregory, he had given her OPM's address and told her that she would be entitled to retirement benefits upon his death. In an initial decision issued on October 11, 1991, OPM denied the appellant's request for survivor annuity benefits. *See* Appeal File, Tab 5(4). OPM noted that the deadline for applying for such benefits was May 8, 1989; that the appellant's letter to OPM was postmarked after that date; and that her request, therefore, was untimely filed.

The appellant requested reconsideration of OPM's initial decision, explaining that it had been her understanding that she could not receive survivor annuity benefits until after Gregory's death "due to the fact that his was a medical (disability) retirement." Appeal File, Tab 5(3). OPM denied the appellant's request for reconsideration, again citing the untimely filing of her application for benefits. *See* Appeal File, Tab 5(2). The appellant then appealed OPM's reconsideration decision to the Board.

On appeal, the appellant bears the burden of proving by a preponderance of the evidence that she is entitled to the benefits she seeks under the civil service retirement system. 5 C.F.R. § 1201.56(a) (2) (1991); *see Cheeseman v. Office of Personnel Management*, 791 F.2d 138, 140-141 (Fed. Cir. 1986), *cert. denied*, 479 U.S. 1037 (1987). A preponderance of the evidence is that degree of relevant evidence that a reasonable person, considering the record as a whole, would accept as sufficient to find that a contested fact is more likely true than untrue. 5 C.F.R. § 1201.56(c) (2) (1991).

In her appeal to the Board, the appellant questioned how she could be held responsible for the late filing of an application for benefits when she was never aware that there was a filing deadline. She pointed out that she meets all of the remaining requirements for entitlement to such benefits. She also noted that she was married to the appellant for a substantial period of time; she reared two children with him; she is now disabled herself; she has very little social security; and she needs this additional assistance.

At the hearing on her appeal, the appellant reiterated the reasons she feels she should be entitled to receive survivor annuity benefits. She noted that Gregory had paid no social security during their marriage and, therefore, she receives nothing as a result of his employment. She explained that she and Gregory remained friends following their divorce and pointed out that it was Gregory who had advised her to get in touch with OPM following his death concerning her entitlement to benefits. Her testimony was corroborated by her son, John W. Gregory III. He also described the sacrifices his mother had made and stated that his sister agrees that the appellant should receive the benefits. He asserted that they would have complied with the deadline if only they had known about it.

The appellant's application for a former spouse survivor annuity was untimely filed.

Under the Civil Service Spouse Equity Act of 1984, Pub. L. No. 98-615, as amended by section 201 of Pub. L. 99-251 (1986), section 501 of Pub. L. 99-556 (1986), and section 127 of Pub. L. 100-238 (1988), a former spouse of a Federal employee who retired before May 7, 1985, would be entitled to receive survivor annuity benefits if she met certain statutory requirements. *See also* 5 C.F.R. § 831.622(a) (1991). One of those statutory requirements is that the former spouse must have filed an application for annuity benefits with OPM on or before May 8, 1989. *Id.*

The nature and character of civil service retirement benefits are determined by Congress and may not be abrogated by other considerations. *See, e.g., Roebling v.*

Office of Personnel Management, 788 F.2d 1544, 1546-47 (Fed. Cir. 1986). The law which granted certain annuity benefits to the former spouse of a civil service retirement annuitant contains very specific requirements, including the time limit for filing for such benefits. OPM cannot be estopped from complying with its statutory mandate. *See Shelley v. Office of Personnel Management*, 6 M.S.P.R. 267, 272 (1981).

The appellant has not asserted that she contacted OPM concerning her entitlement to survivor annuity benefits prior to sending the letter of June 18, 1991; therefore, it is undisputed that her application for benefits was not filed until after the statutory filing deadline of May 8, 1989. Neither the Act nor the implementing regulations imposed any obligation on OPM to notify former spouses of their right to apply for survivor annuity benefits; therefore, OPM's failure to notify the appellant that she might be entitled to such benefits did not relieve her of the obligation to comply with the statutorily-imposed filing deadline. *See Speker v. Office of Personnel Management*, 45 M.S.P.R. 380, 386 (1990), *aff'd*, 928 F.2d 410 (Fed. Cir. 1991) (Table).

Although the equitable considerations raised by the appellant in favor of her receiving survivor annuity benefits are compelling, they do not establish a basis for waiving the statutory requirements established by Congress for her to receive that benefit. Moreover, the appellant has not cited any law or regulation which would afford OPM or the Board any discretion to award her the benefits she seeks. *See, e.g., Copeland v. Office of Personnel Management*, 31 M.S.P.R. 288, 289 (1986) (where there has

been a failure to meet a statutory requirement, the claimed benefits cannot be awarded).

DECISION

The reconsideration decision is AFFIRMED.

FOR THE BOARD:

/s/ Sharon Fonsworth Jackson
Sharon Fonsworth Jackson
Administrative Judge

NOTICE TO APPELLANT

This initial decision will become final on *May 1, 1992,* unless a petition for review is filed by that date or the Board reopens the case on its own motion. This is an important date because it is the last day on which you can file a petition for review with the Board. The date on which the initial decision becomes final also controls when you can file a petition for review with the Court of Appeals for the Federal Circuit. The paragraphs that follow tell you how and when to file with the Board or the federal court. These instructions are important because if you wish to file a petition, you must file it within the proper time period.

BOARD REVIEW

You may request Board review of this initial decision by filing a petition for review. Your petition for review must state your objections to the initial decision, supported by references to applicable laws, regulations, and the record. You must file your petition with:

The Clerk of the Board
Merit Systems Protection Board
1120 Vermont Avenue, NW., Suite 802
Washington, DC 20419

Your petition must be postmarked or hand-delivered no later than the date this initial decision becomes final. If you fail to provide a statement with your petition that you have either mailed or hand-delivered a copy of your petition to the agency, your petition will be rejected and returned to you.

JUDICIAL REVIEW

If you are dissatisfied with the Board's final decision, you may file a petition with:

The United States Court of Appeals
for the Federal Circuit
717 Madison Place, NW.
Washington, DC 20439

You may not file your petition with the court before this decision becomes final. To be timely, your petition must be *received* by the court no later than 30 calendar days after the date this initial decision becomes final.

NOTICE TO AGENCY/INTERVENOR

The agency or intervenor may file a petition for review of this initial decision in accordance with the Board's regulations.